# THE UNITED STATES-PERU TRADE PROMOTION AGREEMENT IMPLEMENTATION ACT
# SECTION-BY-SECTION SUMMARY
# PREPARED BY THE COMMITTEE ON WAYS AND MEANS

### Sections 1–3: Short Title, Table of Contents, Purposes, and Definitions

## TITLE I: APPROVAL AND GENERAL PROVISIONS

### Section 101: Approval and Entry into Force

Section 101 states that Congress approves the Agreement and the Statement of Administrative Action and provides that the Agreement enters into force when the President determines that Peru is in compliance and has exchanged notes, on or after January 1, 2007.

### Section 102: Relationship of the Agreement to United States and State Law

Section 102 provides that U.S. law is to prevail in a conflict and states that the Agreement does not preempt state rules that do not comply with the Agreement. Only the United States is entitled to bring a court action to resolve a conflict between a state law and the Agreement.

### Section 103: Implementing Actions in Anticipation of Entry into Force and Initial Regulations

Section 103(a) provides that after the date of enactment, the President may proclaim actions and issue regulations as necessary to ensure that any provision of this Act that takes effect on the date that the Agreement is entered into force is appropriately implemented, but not before the date the Agreement enters into force.

Section 103(b) establishes that regulations necessary or appropriate to carry out the actions proposed in the Statement of Administrative Action shall, to the maximum extent feasible, be issued within one year of entry into force or the effective date of the provision.

### Section 104: Consultation and Layover for Proclaimed Actions

Section 104 provides that if the President implements proclamation authority subject to consultation and layover, the President may proclaim action only after he has: obtained advice from the International Trade Commission and the appropriate private sector advisory committees; submitted a report to the Ways and Means and Finance Committees concerning the reasons for the action; and consulted with the Committees. The action takes effect after 60 days have elapsed.

**Section 105: Administration of Dispute Settlement Proceedings**

Section 105 authorizes the President to establish an office within the Commerce Department responsible for providing administrative assistance to any panels that may be established under the Agreement and authorizes appropriations for the office and for payment of the U.S. share of expenses. The determination must follow an affirmative determination (or a determination that the President may consider to be an affirmative determination) by the ITC to the same effect.

**Section 106: Arbitration of Claims**

Section 106 authorizes the United States to resolve certain claims covered by the Investor-State Dispute Settlement Procedures set forth in the Agreement.

**Section 107: Effective Dates; Effect of Termination**

The effective date of this Act is the date the Agreement enters into force with respect to the United States except sections 1–3 and Title I take effect upon the date of enactment. The provisions of the Act terminate on the date on which the Agreement terminates.

## TITLE II: CUSTOMS PROVISIONS

**Section 201: Tariff Modifications**

Section 201(a) provides the President with the authority to proclaim tariff modifications to carry out the Agreement and requires the President to terminate Peru's designation as a beneficiary developing country for the purposes of the Generalized System of Preferences program and the Andean Trade Preference Act (ATPA) once the agreement enters into force.

Section 201(b) gives the President the authority to proclaim further tariff modifications, subject to consultation and layover, as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to Peru provided for by the Agreement.

Section 201(c) allows the President, for any goods for which the base rate is a specific or compound rate of duty, to substitute for the base rate an ad valorem rate to carry out the tariff modifications in subsections (a) and (b).

Section 201(d) directs the President to ensure that when implementing tariff rate quotas imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States.

**Section 202: Additional Duties on Certain Agricultural Goods**

Section 202 of the bill implements the agricultural safeguard provisions of Article 2.18 and Annex 2.18 of the Agreement. Article 2.18 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports of certain Peruvian goods specified in the Schedule of the United States to Annex 2.18 of the Agreement that exceed the volume thresholds set out in that annex. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the Schedule of the United States to Annex 2.3 of the Agreement may not exceed the general Normal Trade Relations (NTR) rate of duty. No additional duty may be applied on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in Subtitle A of Title III of the bill or under the safeguard procedures set out in Chapter 1 of Title II of the Trade Act of 1974.

Section 202(b) provides for the Secretary to impose agricultural safeguard duties in any year when the volume of imports of the good exceeds 130 percent of the in-quota quantity allocated to Peru for the good in that calendar year as set forth in Annex 2.3 of the Agreement. The additional duties remain in effect only until the end of the calendar year in which they are imposed.

**Section 203: Rules of Origin**

Section 203 codifies the rules of origin set out in chapter 4 of the Agreement. Under the general rules, there are three basic ways for a Peruvian good to qualify as an "originating good" and therefore be eligible for preferential tariff treatment when it is imported into the United States. A good is an originating good if: (1) it is "wholly obtained or produced entirely in the territory of Peru, the United States, or both"; (2) those materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change or meet other requirements, as specified in Annex 3-A or Annex 4.1 of the Agreement; or (3) it is produced entirely in the territory of Peru, the United States, or both exclusively from originating materials.

Under the rules in chapter 3, Annex 3-A, chapter 4, and Annex 4.1 of the Agreement, an apparel product must generally meet a tariff shift rule that implicitly imposes a "yarn forward" requirement. Thus, to qualify as an originating good imported into the United States from Peru, an apparel product must have been cut (or knit to shape) and sewn or otherwise assembled in Peru, the United States, or both from yarn, or fabric made from yarn that originates in Peru, the United States, or both.

Section 203(o)(2) provides authority for the President to add fabrics or yarns to a list of products that are unavailable in commercial quantities in a timely manner, and such products are treated as if they originate in Peru, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Section 203(o)(4) provides a process by which the President may modify that list at the request of interested entities, defined as Peru and potential and actual suppliers and purchasers of textile or apparel goods.

The remainder of section 203 sets forth more detailed rules for determining whether a good meets the Agreement's requirements under the second method of qualifying as an originating good. These provisions include rules pertaining to de minimis quantities of non-originating materials that do not undergo a tariff transformation, transformation by regional content, and the alternative methods for calculating regional value content. Other provisions in section 203 address valuation of materials and determination of the originating or non-originating status of fungible goods and materials.

**Section 204: Customs User Fees**

Section 204 of the bill implements U.S. commitments under Article 2.10.4 of the Agreement, regarding the exemption of the merchandise processing fee on originating goods. The provision also prohibits use of funds in the Customs User Fee Account to provide services related to entry of originating goods in accordance with U.S. obligations under the General Agreement on Tariffs and Trade 1994.

**Section 205: Disclosure of Incorrect Information**

Section 205 implements Articles 4.18.5 and 4.19.3 of the Agreement. The provision prohibits the imposition of a penalty upon importers who make an invalid claim for preferential tariff treatment under the Agreement if the importer acts promptly and voluntarily to correct the error. If an importer has engaged in a pattern of conduct in providing false or unsupported representations, U.S. authorities may suspend preferential treatment with respect to identical goods imported by that importer.

**Section 206: Reliquidation of Entries**

Section 206 implements Article 4.19.5 of the Agreement and provides authority for the Customs Service to reliquidate an entry to refund any excess duties (including any merchandise processing fees) paid on a good qualifying under the rules of origin for which no claim for preferential tariff treatment was made at the time of importation if the importer so requests, within one year after the date of importation.

**Section 207: Recordkeeping requirements**

Section 207 of the bill implements Article 4.17 of the Agreement and provides that an importer claiming preferential tariff treatment for a good shall maintain, for a period of five years after the date of certification, a certificate of origin or other information demonstrating that the good qualifies as originating.

**Section 208: Enforcement relating to trade in textile or apparel goods**

Section 208 implements the customs cooperation provisions in Article 3.2 of the Agreement. Under section 208(a), the President may direct the Secretary to take "appropriate action" while a verification that the Secretary has requested is being conducted. Such appropriate action may include: (i) suspending preferential tariff treatment for textile or apparel goods that the person subject to the verification has produced or exported if the Secretary believes there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary decides that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary considers there is not enough information to determine their country of origin; and (iv) denying entry to such goods if the Secretary determines that a person has provided erroneous information on their origin.

Under section 208(c), the President may also direct the Secretary to take "appropriate action" after a verification has been completed. Depending on the nature of the verification, the action may include: (i) denying preferential tariff treatment to textile or apparel goods that the person subject to the verification has exported or produced if the Secretary considers there is insufficient information to support a claim for such treatment or determines that a person has provided incorrect information to support a claim for such treatment; and (ii) denying entry to such goods if the Secretary decides that a person has provided incorrect information regarding their origin or that there is insufficient information to determine their origin. Unless the President sets an earlier date, any such action may remain in place until the Secretary obtains enough information to decide whether the exporter or producer that was subject to the verification is complying with applicable customs rules or whether a claim that the goods qualify for preferential tariff treatment or originate in an Agreement country is accurate.

Under section 208(e), the Secretary may publish the name of a person that the Secretary has determined: (i) is engaged in circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

**Section 209: Regulations**

Section 209 provides that the Secretary of Treasury shall prescribe regulations to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions.

## TITLE III: RELIEF FROM IMPORTS

**Section 301: Definitions**

Section 301 defines key safeguard terms for Subtitle A.

### SUBTITLE A: RELIEF FROM IMPORTS BENEFITING FROM THE AGREEMENT

**Section 311: Commencing of Action for Relief**

Sections 311-316 authorize the President, after an investigation and affirmative determination by the U.S. International Trade Commission, to impose specified import relief when, as a result of the reduction or elimination of a duty under the Agreement, a Peruvian product is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to the domestic industry.

Section 311 provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations initiated under Subtitle A. Section 311(a)(1) provides that a petition requesting a safeguard action may be filed with the ITC by an entity that is "representative of an industry." As under section 202(a)(1) of the Trade Act of 1974, the term "entity" is defined to include a trade association, firm, certified or recognized union, or a group of workers. Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in Subtitle A safeguard proceedings.

Section 311(c) defines "substantial cause" and applies factors in making determinations in the same manner as section 202 of the Trade Act of 1974. Section 311(d) exempts from investigation under this section Peruvian articles that have previously been the basis for according relief under Subtitle A to a domestic industry.

**Section 312: Commission Action on Petition**

Section 312 requires the ITC to make a determination not later than 120 days after the date on which the Section 311 investigation is initiated. Under sections 312(b) and (c), if the ITC makes an affirmative determination, it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

**Section 313: Provision of Relief**

Under section 313(a), the President may provide import relief to the extent that the President determines is necessary to remedy or prevent the injury found by the ITC and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the relief will not provide greater economic and social benefits than costs.

Section 313(c) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of a suspension of further reductions in the rate of duty to be applied to the articles in question, or an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty imposed on the day before the Agreement entered into force. Under section 313(c)(2), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) states that the import relief that the President is authorized to provide may not exceed four years in the aggregate. The initial period of import relief may be of up to two years, and the President may extend the period of import relief for an additional two years (to a maximum aggregate period of four years). Section 313(e) specifies that on the termination of relief, the rate of duty for the remainder of the calendar year is the rate that was scheduled to have been in effect one year after the initial provision of import relief. For the remainder of the duty phase-out period, the President may set the rate of duty called for in the Agreement or choose to eliminate the duty in equal annual stages until the end of the scheduled phase-out period.

Section 313(f) exempts from relief any article that is: (i) subject to import relief under the global safeguard provisions in U.S. law (chapter 1 of Title II of the Trade Act of 1974); (ii) subject to import relief under Subtitle B; or (iv) subject to additional duties as an agricultural good under section 202(b).

**Section 314: Termination of Relief Authority**

Section 314 provides that no relief may be provided under this subtitle after ten years from the date the Agreement enters into force, unless the tariff elimination for the article under the Agreement is greater than ten years, in which case relief may not be provided for that article after the period for tariff elimination for that article ends.

**Section 315: Compensation Authority**

Section 315 authorizes the President to provide compensation to Peru consistent with Article 8.5 of the Agreement.

**Section 316: Confidential Business Information**

Section 316 provides for the treatment of confidential business information.

## SUBTITLE B: TEXTILE AND APPAREL SAFEGUARD MEASURES

**Section 321: Commencement of Action for Relief**

Section 321 provides that a request for safeguard relief under this subtitle may be filed with the President by an interested party. The President is to review the request and determine whether to commence consideration of the request. If the President determines to commence consideration of the request, he will publish a notice commencing consideration and seeking comments. The notice is to include a summary of the request.

Under section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice stating that the request will be considered and seeking public comments on the request.

**Section 322: Determination and Provision of Relief**

Section 322(a) provides for the President to determine, pursuant to a request by an interested party, whether, as a result of the elimination or reduction of a duty provided under the Agreement, a Peruvian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. The President must make this determination within 30 days after the completion of consultations held pursuant to article 3.1.5 of the Agreement.

Section 322(b) identifies the relief that the President may provide, which is an increase in tariffs to the lesser of the existing NTR/MFN rate or the NTR/MFN rate imposed when the Agreement entered into force.

**Section 323: Period of Relief**

Section 323 of the bill provides that the period of relief shall be no longer than two years. The President may extend the relief for a period not more than one year, if he determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry, and there is evidence the industry is making a positive adjustment. The aggregate period of relief, including any extension, may not exceed three years.

**Section 324: Articles Exempt from Relief**

Section 324 provides that relief may not be granted to an article under this safeguard if relief has previously been granted under this safeguard for that article, or the article is subject to import relief under subtitle A of title III of this bill or under chapter 1 of title II of the Trade Act of 1974.

**Section 325: Rate After Termination of Import Relief**

Under section 325, after a safeguard expires, the rate of duty on the article that had been subject to the safeguard shall be the rate that would have been in effect but for the safeguard action.

**Section 326: Termination of Relief Authority**

Section 326 provides that the authority to provide safeguard relief under this subtitle expires five years after the date on which the Agreement enters into force.

**Section 327: Compensation Authority**

Section 327 gives authority to the President to provide compensation to Peru if relief is ordered.

**Section 328: Confidential Business Information**

Section 328 provides for the treatment of confidential business information.

## SUBTITLE C: CASES UNDER TITLE II OF THE TRADE ACT OF 1974

**Section 331: Findings and Action on Goods from Peru**

Section 331(a) provides that if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether Peruvian imports of the article that qualify as originating goods under section 203(b) are a substantial cause of serious injury or threat thereof. Under section 331(b), if the ITC makes a negative finding under section 331(a), the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

## TITLE IV: PROCUREMENT

### Section 401: Government Procurement

Section 401 implements chapter 9 of the Agreement and amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act of 1979. As amended, section 308(4)(A) will provide that an "eligible product" means a product or service of Peru that is covered under the Agreement for procurement by the United States.